ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Norma McCorvey, formerly known as JANE ROE,	§	
	§	
Plaintiff,	§	
	§	
V.	§	**CIVIL ACTION NOS. 3-3690-B**
	§	**AND 3-3691-C**
HENRY WADE, Through His Official Successor in Office, William "Bill" Hill, Dallas County District Attorney,	§	
	§	
Defendant.	§	

BRIEF IN SUPPORT OF RULE 60 MOTION FOR RELIEF FROM JUDGMENT

TO THE HONORABLE COURT:

NOW COMES, NORMA MCCORVEY, formerly known in this Court as Jane Roe, the Plaintiff herein (hereinafter referred to as "Plaintiff"), and files this her Brief in Support of Rule 60 Motion For Relief From Judgment.

INTRODUCTION

Pursuant to Federal Rules of Civil Procedure Rule 60(b)(5) and (6), Plaintiff Norma McCorvey has filed a Rule 60 Motion For Relief From Judgment, seeking that the original ruling of the Court in this cause be vacated. Fed. R. Civ. P. 60(b) provides, "[o]n motion and upon such terms as are just, the court may relieve a party...from judgment...[when]...it is no longer equitable that the judgment should have prospective application." The primary United States Supreme Court opinion which supplies the proper legal standard for a court to follow when considering a Rule 60 motion is *Agostini v. Felton.*[1] The threshold issue to be decided is "whether the factual or legal landscape has changed since...[the prior ruling of the Court]".[2] It is appropriate to grant a Fed. R. Civ. P. 60(b) motion when the party seeking relief can show, "a significant change in either factual conditions or in law. 'A Court may recognize subsequent changes in either statutory or decisional law.'"[3] Either a change in law or factual circumstances is sufficient by itself.[4]

Since the Court's decision in *Roe* in 1973[5], there have been significant changes in statutory and decisional law, as well as factual circumstances. The facts and law have changed such that *Roe* has become "an instrument of wrong" which "[t]he Court cannot be required to disregard".[6] The facts and law now demonstrate that it is no longer just or equitable for *Roe* to have prospective application. The Court's decision in *Roe* should be vacated.

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1. *Agostini v. Felton*, 521 U.S. 203 (1997) (hereinafter "*Agostini*").
2. *Id.* at 216.
3. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992).
4. *Agostini*, 521 U.S. at 214.
5. *Roe v. Wade*, 410 U.S. 113 (1973) (hereinafter "*Roe*").
6. *Railway Employees v. Wright*, 364 U.S. 642, 647 (1961).

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I. CASE LAW AND AUTHORITIES

Federal Rules of Civil Procedure, Rule 60(b)(5) and (6) provide:

> "(b) On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons:. . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." [Emphasis added.]

The primary United States Supreme Court opinion which determines the proper legal standard for a court to follow when considering a motion pursuant to Fed. R. Civ. P. 60(b) is *Agostini v. Felton.*[7] In *Agostini,* twelve years after the Supreme Court held in *Aguilar v. Felton*[8] that the Establishment Clause barred the New York City Board of Education from sending public school teachers into parochial schools, the Board and parochial school children's parents filed a motion under Fed. R. Civ. P. 60(b)(5) seeking relief from the permanent injunction entered by the Court in 1985. The Court found that a motion pursuant to Fed. R. Civ. P. 60(b) was procedurally sound and the appropriate vehicle for the parties to seek relief from a prior ruling of the Court.[9] The Court also found that the doctrines of *stare decisis* and the law of the case "...do(es) not preclude us from recognizing the change in our law and overruling *Aguilar* and those portions of *Ball* inconsistent with our more recent decisions."[10] "The doctrine does not apply if the court is 'convinced that [its prior decision] is clearly erroneous and would work a manifest injustice.'"[11]

In *Agostini,* the Court not only found that it had jurisdiction and authority to overrule their prior ruling in the same cause of action when considering a Fed. R. Civ. P. 60(b) motion, they also

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7. *Agostini v. Felton,* 521 U.S. 203 (1997) (hereinafter "*Agostini*").
8. 473 U.S. 402 (1985).
9. 521 U.S. at 214.
10. 521 U.S. 203; *School District of Grand Rapids v Ball,* 473 U.S. 373 (1985)(the companion case to *Agostini).*

found that they had the authority to overrule a companion case to the current cause of action at bar.[12] Similarly, Plaintiff Norma McCorvey requests that the Court not only overrule the prior decision in *Roe*, but also overrule the decision in the companion case *Doe v. Bolton.* Further, the evidence as presented herein, in the Rule 60 Motion for Relief From Judgment and as Plaintiff will present at the evidentiary hearing and oral argument will show that the prior decision of the Court is clearly erroneous and would work a manifest injustice if applied prospectively. Accordingly, under both Fed. R. Civ. P. 60(b) and *Agostini*, Plaintiff Norma McCorvey has requested that the prior ruling of the Court in this cause be vacated.

When considering a Fed. R. Civ. P. 60(b) motion, the Court determined in *Agostini* that the threshold issue to be decided is "whether the factual or legal landscape has changed since...[the prior ruling of the Court]."[13] In *Rufo v. Inmates of Suffolk County Jail*, the Supreme Court held that it is appropriate to grant a Fed. R. Civ. P. 60(b) motion when the parties seeking relief can show, "a significant change either in factual conditions or in law.[14] 'A Court may recognize subsequent changes in either statutory or decisional law.'" "The Court cannot be required to disregard significant changes in law or facts if it is satisfied that what it has been doing has been turned through changed circumstances into an instrument of wrong."[15] Either a change in law or factual circumstances is sufficient by itself.[16] Both need not be proven. There have been significant changes in both factual circumstances and law since the prior ruling of the Court in *Roe.* New factual and legal evidence since the Court's decision in *Roe* and its companion case, *Doe*, as presented herein, and in Plaintiff's Rule 60 Motion for Relief From Judgment (incorporated herein by reference), and

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11. 521 U.S. at 236.
12. *See Agostini,* 521 U.S. 203.
13. 521 U.S. at 216.
14. 502 U.S. 367, 384 (1992).
15. *Railway Employees v. Wright*, 364 U.S. 642, 647 (1961).

as will be presented to the Court at the evidentiary hearing requested by Plaintiff, now establishes that *Roe* and *Doe* have become an "instrument of wrong".[17] Accordingly, under Fed. R. Civ. P. 60(b) and current United States Supreme Court case law as cited herein, it is no longer just or equitable to give the *Roe* and *Doe* decisions prospective application.

II. SIGNIFICANT CHANGES IN LAW SINCE 1973

A. Significant Changes in Decisional Law Since 1973

1. *Webster v. Reproductive Services*, 492 U.S. 490 (1989).

Since the original ruling of this Court and the United States Supreme Court in *Roe*, the Supreme Court has issued opinions in a number of subsequent cases that have significantly undermined the legitimacy of its ruling in *Roe*. *Webster v. Reproductive Services*[18], began the subsequent erosion of *Roe*, while not overruling it directly. The *Webster* ruling first allowed a state to favor childbirth over abortion and provided for viability testing, stating, "[t]here is no doubt our holding today will allow some governmental regulation of abortion that would have been prohibited..." under prior decisions.[19] Four Justices said all or part of *Roe* should be abandoned and one applied an undue burden standard.[20] Even Justice Blackmun, the author and a defender of *Roe*, changed from calling abortion a "fundamental" right to a "limited fundamental constitutional right."[21]

2. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

The *Casey*[22] decision further undermined *Roe*. The *Casey* opinion elevated society's

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16. 521 U.S. at 214.
17. *See Railway Employees, supra.*
18. *Webster v. Reproductive Services,* 492 U.S. 490 (1989) (hereinafter referred to as "*Webster*").
19. 492 U.S. at 520-21.
20. *Id.*
21. *Id.* at 535 (dissenting).
22. 505 U.S. 833 (1992) (hereinafter referred to as "*Casey*").

profound interest in "potential" life[23]. Furthermore, the plurality opinion in *Casey* rejected *Roe's* classification of abortion as a fundamental right requiring strict scrutiny, stating, "[w]e acknowledge that our decisions after *Roe* cast doubt upon the meaning and reach of its holding."[24]

3. *Washington V. Glucksberg*, 521 U.S. 702 (1997).

In *Roe*, the Court held that abortion should be covered by the umbrella of personal liberty and privacy. However, that over expansive definition of "liberty" has been rejected by subsequent decisions, most importantly, *Washington v. Glucksberg*.[25] In *Glucksberg*, a physician filed suit in federal Court, claiming Washington's law banning assisted suicide violated his and his patient's Fourteenth Amendment substantive due process right "to die" and was therefore facially unconstitutional. The physician claimed the Fourteenth Amendment's Due Process Clause guarantees the right to die, and with it the right to assistance in doing so, as a fundamental "liberty" central to the "autonomy" and "dignity" of a person.[26] In *Glucksberg*, the Supreme Court narrowed the definition of liberty under the Fourteenth Amendment and struck at the heart of *Roe's* decisional basis by changing the underlying test the Court uses to enumerate which rights should be ranked as fundamental. The *Glucksberg* Court established a new, two-prong test to enumerate which rights are so "implicit in the concept of ordered liberty"[27] as to be considered "fundamental" and therefore Constitutionally protected. To be considered a fundamental liberty interest, the Supreme Court held that the right in question must:

(1) find a cognizable basis in the Constitution's language or design[28]; and
(2) be "so rooted in the traditions and conscience of our people as

23. *Id.*
24. *Id.*at 845.
25. 521 U.S. 702 (1997) (hereinafter "*Glucksberg*").
26. *Id.* at 707, 708.
27. *See Palko v. Connecticut*, 302 U.S. 319, 325 (1937).
28. 521 U.S. at 723, n. 18 (*quoting Vacco,* 80 F.3d 716 (1997)).

to be ranked as fundamental."[29]

The *Glucksberg* Court found that there is no fundamental liberty interest to determine the time and manner of one's death because: (1) "[the] right to assisted suicide finds no cognizable basis in the Constitution's language or design"[30]; and the "right to die" is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[31] Applying the *Glucksberg* test directly to the case at bar, the right to procure an abortion (1) finds no cognizable basis in the Constitution's language or design, and (2) is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[32] To the contrary, the *Roe* Court itself indicated that "[t]he Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century."[33] If anything, the regulation of abortion, rather than the right to procure an abortion, is "rooted in the traditions and conscience of our people"[34] as evidenced by a century of statutes prohibiting the same. In light of such dramatic changes in decisional law, if the original cause of action in *Roe* were decided today, under the *Glucksberg* standard, the Texas abortion statutes should be upheld as Constitutionally sound. Based upon these subsequent changes in decisional law, there is no fundamental liberty interest to procure an abortion and it would be error for the Court to refuse to grant this Motion pursuant to Fed. R. Civ. P. 60(b) in light of such changes.[35] "It would be anomalous if the results reached under a constitutional standard remained binding after the standard or test was repudiated."[36] Abortion is neither so rooted in the traditions of our people nor in the language of the Constitution so as to be a fundamental right after

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29. 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).
30. 521 U.S. at 723, n. 18 (*quoting Vacco*, 80 F.3d 716 (1997)).
31. 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).
32. *Id.*
33. 410 U.S. at 116.
34. 521 U.S. at 721 (*quoting Snyder*, 291 U.S. 97, 105 (1934)).
35. *See Agostini.*
36. *Planned Parenthood v. Casey*, 947 F.2d 682 (1991).

Glucksberg. Yet the right to life has existed for centuries, and is expressly mentioned by name in the Constitution in the Fifth and Fourteenth Amendments.

In light of the *Glucksberg* decision, *Roe's* antiquated and now discredited method of scrutinizing the constitutionality of the Texas abortion statute should no longer be used as precedent. Had the Court initially examined the issue of abortion as the *Glucksberg* decision now mandates, the conclusion reached in *Roe* would have been radically different. *Roe* itself recognized that most states at the time outlawed abortion,[37] certainly negating any claim that abortion was a traditionally established right as now required by the *Glucksberg* analysis. Instead, *Roe* usurped the people's right to protect all human life, a traditional right expressly named in the Fourteenth Amendment. In keeping with *Glucksberg's* analysis, the right to procure an abortion finds no more "cognizable basis in the Constitution's language or design" than does the right to physician-assisted suicide.

Preventing harm to a woman, even if the harm is self-inflicted as in suicide or abortion, is not an undue burden on her liberty to control her own body. Therefore the relief sought in this Rule 60 Motion is consistent with *Casey*. The law does not allow women to slash their own wrists or shoot themselves, even when their life is intensely hard or seems hopeless at the moment, even in a difficult pregnancy.[38] Society must compassionately help women in such circumstances, not abandon them to atomistic loneliness through the solitary pain of abortion, even if their circumstances seem difficult at the time. Therefore, the killing of a human child through abortion should not be protected under the Fourteenth Amendment. In 1993, six Justices of the Court in *Reno v. Flores*[39] also reaffirmed and strengthened the traditional notions of due process analysis adopted in *Glucksberg, supra*. Applying *Reno* analysis, the alleged right to abortion did not exist and was

37. 410 U.S. at 139, nn. 34, 35.
38. *Glucksberg,* 521 U.S. 702 (1997.)
39. 507 U.S. 292, 301, 305 (1993).

not objectively rooted in this Nation's history and tradition.[40] Nor is abortion "implicit in the concept of ordered liberty," such that "neither liberty or justice would exist if they were sacrificed."[41]

Glucksberg,[42] now holds since *Roe* that the State has a substantial interest in prohibiting intentional killing and preserving human life, preventing the serious public health problems of suicide [self-inflicted harm, even if knowing and voluntary], especially among the young, and those suffering from untreated pain or from depression or other mental disorders, protecting the medical profession's integrity and ethics and maintaining physicians' roles as their patient's healers, protecting the poor and persons in other vulnerable groups from indifference, prejudice, and psychological and financial pressure to end their lives and avoiding a possible slide towards voluntary and perhaps even involuntary euthanasia.[43]

These state interests can outweigh the woman's right to harm herself through suicide, even when it is truly only her "body" involved in the decision. Her "right to control her own body" which is a key to abortion rights theory was outweighed by the factual dangers of potential abuse in the suicide situation. Similar factual dangers of abuse by doctors and family members are present in abortion as in assisted suicide.

> "The analogies between the abortion cases [*Roe* and *Casey*] and this one *[Glucksberg*] are several.[44] Like the decision to commit suicide, the decision to abort potential life can be made irresponsibly and under the influence of others, and yet the Court has held in the abortion cases that physicians are fit assistants."[45]

The statement above (taken from *Glucksberg*) is the first acknowledgement by the Court that the act of abortion can be done irresponsibly and under the influence of others.

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40. *Snyder v. Massachusetts,* 291 U.S. 97, 105 (1934).
41. *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937).
42. 521 U.S. 702 (1997).
43. *Id.*
44. 521 U.S. at 778 (Souter, concurring in judgment).
45. *Id.*

The similarities between assisted suicide and abortion include, but are not limited to:

1. Like the decision to commit suicide, the decision to abort can be "made irresponsibly,"[46]
2. Like the decision to commit suicide, abortion can be, and almost always is, made "under the influence of others," as the Supreme Court has recognized.[47]
3. "The vigilance of physicians" is "not enough" to protect women where decisions to abort (or commit suicide) are not voluntary and truly informed.[48] In fact, it is not easy to tell when a woman's "choice" is her own, or that of her boyfriend, husband, or parents, as with some assisted suicides. The abortion industry as practiced since 1973 makes almost no effort to determine if the woman's decision is voluntary or coerced.[49]
4. As with the decision to commit suicide, women that have sought abortions often say they suffered an inability to fully process data at such a difficult time.[50] The Court in *Roe* and *Casey* assumed that all women possessed "knowing and responsible minds" during the time the decision to abort is made, but the evidence from the Women's Affidavits is that the shock, uncertainty, hurt from abandonment by others they love and trust most, shame, and general emotional trauma make abortion "almost always a tragic decision."[51]
5. As with assisted suicide, abortionists "have their own financial incentives"[52], which may lead them to be biased toward abortion. This bias creates an insidious influence upon the women they counsel to have abortions during a period of serious emotional strain for the pregnant women.[53]
6. "Whether acting under compassion or under some other influence... the barrier between assisted suicide and euthanasia can become very porous, and the line between voluntary and involuntary euthanasia [abortion] as well.[54] [Abortion added]. Abortion clinics train their counselors to do counseling in as short a time as possible and counsel for sales.[55]
7. There is no way in practice that the "right" claimed in *Roe* or *Glucksberg*, supposedly a free and voluntary choice to abort or to commit suicide, is "readily containable by reference to facts about the mind that are matters of difficult judgment, or by gate keepers

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46. 521 U.S. at 778 (Souter, concurrence).
47. *Id. See also* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.
48. *Id.* at 738.
49. *See* Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records for Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.
50. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
51. *Women's Medical Center v. Bell*, 248 F. 3d 411, 418 (5th Cir. 2001), *cert.denied.*
52. 521 U.S. at 789.
53. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp.15-1410.
54. 521 U.S. at 785.
55. *See* Women's Affidavits, attached hereto in the Appendix, Tab B. pp. 15-1410; *see also* Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

who are subject to temptation, noble or not."[56]

8. The State, women, and all individuals in the State, have an interest in preventing self-inflicted harm. Suicide is a "manifestation of medical and psychological anguish."[57] The same is true of abortion in practice.[58]
9. "Research indicates, however, that many people who request physician-assisted suicide withdraw that request if their depression and pain are treated."[59] The same is true of requests for abortion which are denied. Doctors relate that later the woman is glad the child is alive.[60] Similarly, most women who plan to put their child up for adoption in the crisis of the moment later rescind their decision and keep the child.
10. Like physician-assisted suicide, abortion as practiced undermines the State and the woman's "interest in protecting the integrity and ethics of the medical profession."[61]
11. Like physician-assisted suicide, abortion as practiced by the abortion industry undermines the State's, and women's "interest in protecting vulnerable groups - - including the poor."[62] The poor in Texas and nationwide are especially susceptible to and abused by the abortion industry. The poor feel particular pressure to abort because of financial concerns about raising a child. They often feel in reality they have no choice.[63] They are preyed upon by being told the cost will go up if they do not abort quickly. They are not counseled about state financial aid and adoption, nor given adequate time to reflect.[64] There is a real risk of "subtle coercion and undue influence. The risk of harm is greater for the many individuals in our society whose autonomy and well-being are already compromised by poverty... or membership in a stigmatized group."[65] Husbands and boyfriends who do not want to pay for children's care pressure women to abort.[66]
12. The State's interest in abortion, as in assisted suicides, goes far beyond protecting the vulnerable from coercion; it extends to protecting... from prejudice, negative, and inaccurate stereotypes, and "societal indifference." The Women's Affidavits show that women whose pregnancies are inconvenient and disruptive to others' lives are subject to prejudice, negative and inaccurate stereotypes and societal indifference. This is very similar to the elderly and terminally ill that subject to coercion to commit suicide by those whose lives are disrupted by the burden to care for them. These pressures combine to coerce women into abortions they do not want; sometimes subtly, sometimes violently.[67]
13. Just as with assisted suicide, "family members and loved ones, will inevitably participate

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56. 521 U.S. at 785. *See also* Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
57. 521 U.S. 702, 730 (Rehnquist, per majority).
58. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also Women's Medical Center*, supra.
59. 521 U.S. at 730.
60. *See* Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307.
61. 521 U.S. at 731; *See* Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.
62. *Id.*
63. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
64. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
65. 521 U.S. at 732; *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
66. *See* the Women's Affidavits, Question 4, attached hereto in the Appendix, Tab B, pp. 15-1410.
67. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.

in assisting [abortion]... which could prove extremely difficult to police and contain. Washington's [Texas'] ban on assisting suicide [abortion] prevents such erosion.[68] [Abortion and Texas added].

14. The abortion industry in Texas tends to prey upon young people, who are especially vulnerable, and especially unable to weigh long term consequences of action. "Suicide is a leading cause of death... of those between the ages of 14 to 54, ... and suicide [abortion] is particularly prevalent among the young..." [69] [Abortion added].
15. Finally, the actual practice of abortion is not beneficial to women on the whole, just as experience with actual euthanasia in the Netherlands convinced the Supreme Court that the line between voluntary and involuntary self-harm could not be policed in practice.[70] Actual experience, even if the reviews are mixed, must be the guide.

In summary, abortion may not be as fatal for a woman as a successful suicide attempt, but it can be as damaging and longer lasting than attempted suicide.[71] As the women report, abortion for many is a form of silent suicide. If a woman does not have a constitutional right to inflict serious harm to herself alone, how can the Constitution give her a right to harm herself and another, her unborn child?

4. Federalism, *U.S. v. Lopez,* And Its Progeny

Extremely significant changes in the law of Federalism have occurred in the Supreme Court in recent years which would return the decision whether to allow or prohibit abortion and the resulting harm to women to the states.[72] Before *Roe* federalized the issue, women and family health and safety issues and specifically abortion were traditional state and local concerns.[73]

With the re-emergence of Federalism in recent landmark decisions, the Supreme Court has moved this critical area of constitutional jurisprudence to the forefront of federal judicial review.

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68. 521 U.S. at 733. [bracketed material added]; *See* the Women's Affidavits (Showing frequent coercion and pressure by family members to abort for the interests of others), attached hereto in the Appendix, Tab B, pp. 15-1410.
69. *Id.*at 730. (Bracketed material added.)
70. *Id.*at 734. (Souter, concurring at 785-786); *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
71. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.
72. *See*, e.g., U.S. *v. Lopez,* 514 U.S. 549 (1995); *U.S. v. Morrison,* 529 U.S. 598 (2000); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114 (1995).
73. 410 U.S. at 139, 140 n. 34-37; *Webster v. Reproductive Services,* 492 U.S. at 520 ("areas of medical practice

Beginning with *United States v. Lopez*, this movement represents a renewed emphasis on the judicial enforcement of the constitutional Federalism boundary lines.[74] While the Court has largely focused on Congress in *Lopez* and its progeny, the doctrine of federalism applies to the dangers of overreaching national power among all branches of government, including the Supreme Court itself. In fact, "the danger to federalism may be greater from the federal Courts than from Congress simply because judicial intervention is anti-democratic" such that "the states have relatively little recourse."[75] The common thread among the line of federalism cases involves the Court's restriction of expansion of national power into traditional state law matters such as education, crime, family law and health issues, which abortion clearly involves. Yet *Roe* is now completely contrary to this new line of cases. The Court's application of *Lopez* Federalism to *Roe* could not only properly return this traditional state law matter to the states, but it could also restore the democratic processes needed on this issue of great controversy.

Therefore, in reversing *Roe*, the Court would be correcting excessive judicial intervention in these cultural clashes which can stoke great public resentment, and politicize the Courts themselves, and impede the abiding progress that comes from democratic governance.[76] The *Roe* decision has politicized every presidential election and Supreme Court nomination since its decision and will do so until it is overruled. The proper vehicle for creating a constitutional right to abortion would then be a constitutional amendment by the people. Women's right to vote is much more secure than *Roe* because it was birthed through a Constitutional Amendment, not a judicial opinion.

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traditionally subject to state regulation").

74. 514 U.S. 549 (1995); *See also U.S. v. Morrison,* 529 U.S. 598 (2000); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114 (1995).

75. J. Harvie Wilkinson, III, *The 2000 Justice Lester W. Roth Lecture: Federalism for the Future*, 74 S. CAL. L. REV. 523, 536 (2001).

76. *See* Justice Scalia bemoaning "carts full of mail" and "demonstrators" outside the Supreme Court, *Webster,* 492 U.S. at 535, (concurring in part and concurring in judgment).

5. Since 1973, Cases Involving Parental Rights Have Established Greater Protection For The Parent-Child Relationship

The Supreme Court has determined that parental rights are a fundamental right.[77] We cannot terminate parental rights today as easily as we did in 1973. The U.S. Supreme Court has held that the Constitution protects the mother-child relationship and that due process requires that this relationship be protected. Abortion is the termination of parental rights - an unconstitutional waiver of a fundamental right. The law concerning the termination of the parent-child relationship has significantly changed since 1973. In *Roe v. Wade*, the mother-child relationship was neither recognized nor protected, but actually undermined by the decision to allow a mother the right to terminate her parental rights through abortion without due process protections. Plaintiff Norma McCorvey will request permission to submit a separate Brief on this topic at a later time.

6. Illegitimacy Cases Have Established Greater Protection For Children Conceived Out Of Wedlock

Illegitimate children are protected to a far greater degree today than they were in 1973. This shows the importance of protecting all innocent children even from inappropriate conduct of their parents. The Court in *Roe v. Wade*, strongly emphasized the burden, distress and "the additional difficulties and continuing stigma of unwed motherhood," that would be placed on a woman should she be forced to carry an unwanted child, including the adverse effects on the illegitimate child.[78] Although a legitimate concern in years prior to 1973, the Court has since broadened the rights of illegitimate children by equating their rights with those of legitimate children. This has produced a strong emphasis on the importance of protecting innocent born children and children in the womb,

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77. *Meyer v. Nebraska,* 262 U.S. 390 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510 (1925); *Prince v. Massachusetts,* 321 U.S., 158 (1944); *Wisconsin v. Yoder,* 406 U.S. 205 (1972); *Quilloin v. Walcott,* 434 U.S. 246 (1978); *Reno v. Flores,* 507 U.S. at 304; *Washington v. Glucksberg,* 521 U.S. 702 (1997); *Casey,* 505 U.S. at 895. *Troxel v. Granville,* 530 U.S. 57 (2000).
78. 410 U.S. 113, 153 (1973).

even from harmful acts of improper conduct of their parents. *Roe v. Wade* is in fact invidious discrimination against illegitimate children, allowing them to be killed at will, and much lesser invidious discrimination against illegitimate children has been rejected by the Court in other areas.

In 1973, the Court was faced with a culture that was radically against illegitimacy and unwed motherhood. From the Court's rulings in *Levy v. Louisiana*[79] and *Weber v. Aetna Casualty & Surety Co.*,[80] it is evident that the Court recognized the need in the early 1970's to protect illegitimate children. In cases subsequent to 1973, there has been an even stronger emphasis on the necessary state action needed to properly equate their rights with the rights of legitimate children. In striking contrast, however, illegitimate children are not protected by legalized abortion, they are destroyed by it. In *Trimble v. Gordon*, the Court struck down laws under which an illegitimate child was denied her father's inheritance because of her birth status.[81] This unconstitutional denial was based on an Illinois statute allowing illegitimate children to inherit by intestate succession only from their mothers.[82] Yet *Roe* unconstitutionally denies illegitimate children their right to life (and all that accompanies it, like inheritance) based on their birth status.

After *Roe*, the line of cases giving protection for illegitimate children, except in abortion, grew even stronger. In addition to inheritance recovery, the Supreme Court has provided illegitimate children with substantially more rights regarding the establishment of paternity, which further legitimizes their legal status, even before their birth. Gradually, the Court has broadened the time frame for illegitimate children to seek paternity and continues to equate their rights with the rights of legitimate children.[83]

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79. 391 U.S. 68 (1968).
80. 406 U.S. 164 (1972).
81. 430 U.S. 762 (1977).
82. *Id.* at 763.
83. *See Mills v. Habluetzel*, 456 U.S. 91 (1982); *Pickett v. Brown*, 462 U.S. 1 (1983); *Clark v. Jeter*, 486 U.S. 456

This progressive expansion of the rights of illegitimate children through equal protection under the law has increased greatly since *Roe*. The stigma of illegitimacy and unwed motherhood was such a tremendous burden on women in 1973, that the *Roe* Court felt that abortion might be preferable to forcing the mother to live with its "stigma of unwed motherhood."[84] Today illegitimate children are fully protected under the law except in the one unjust instance of abortion. Under *Roe*, illegitimate children can be killed by one of their parents, the mother, even if the state or the other parent wants to care for them for life. That should now be recognized as manifest injustice. The Court should continue to expand justice to all innocent children, particularly children born of illegitimate status. This is especially true in Texas and the other forty (40) states with abandoned children laws, where the state will now care for all children from birth until the age of maturity.

7. Baby M And Surrogate Mother Cases

The *Baby M* case has shown that surrogate motherhood will not be allowed by some Courts even when there is an apparent written consent by a mother.[85] In other words, the law protects the woman against coercion when she is in very delicate and vulnerable circumstances in the case of a surrogate mother. Arguably, the same protection from coercion should be applied to the circumstances of a woman in a crisis or otherwise unplanned pregnancy. Plaintiff Norma McCorvey will seek permission later to file Brief on Surrogate Motherhood by Harold Cassidy, the lead attorney for Baby M and her mother.

B. Changes in Statutory Law Since 1973

1. Increased Protection For Unborn Children In Statutory Law

In addition to the considerable changes in decisional law outlined above, there have also been

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(1988).
84. 410 U.S. at 153.
85. *See In the Matter of Baby "M"*, 217 N.J. Super. 313 (1987).

significant changes in statutory law since the Court's original ruling in *Roe*. "The overwhelming majority of states now permit some form of recovery for the loss of an unborn child. For example, approximately ten states and the District of Columbia recognize a common law cause of action for mental anguish suffered as a result of the loss of an unborn child."[86] In addition, approximately thirty-six (36) states and the District of Columbia. Illinois, North Carolina, Pennsylvania, Vermont and the District of Columbia recognize a common law cause of action for mental anguish suffered as a result of the death of an unborn child and a wrongful death cause of action for the death of a viable fetus. However, several states that recognize a common law cause of action for mental anguish suffered as a result of the death of an unborn child do not recognize a wrongful death cause of action for the death of a viable fetus.[87] Most of these states characterize a viable fetus as a

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86. *Krishnan v. Sepulveda;* 916 S.W. 2d 478 at 480-81, n.2 (1995), citing *Modaber v. Kelley*, 232 Va. 60, 348 S.E.2d 233, 237 (Va. 1986); *Giardina v. Bennett*, 111 N.J. 412, 545 A.2d 139, 140-42 (N.J. 1988); *Johnson v. Ruark Obstetrics and Gynecology Associates, P.A.*, 327 N.C. 283, 395 S.E.2d 85, 98-99 (N.C. 1990); *Hilsman v. Winn Dixie Stores, Inc.*, 639 So. 2d 115, 117 (Fla. App. 1994); *McGeehan v. Parke-Davis*, 573 So. 2d 376, 376-78 (Fla. App. 1991); *Prado v. Catholic Medical Center of Brooklyn and Queens, Inc.*, 145 A.D.2d 614, 536 N.Y.S.2d 474, 475 (N.Y. App. Div. 1988); *District of Columbia v. McNeill*, 613 A.2d 940, 942-44 (D.C. 1992); *Seef v. Sutkus*, 205 Ill. App. 3d 312, 562 N.E.2d 606, 608-09, 150 Ill. Dec. 76 (Ill. App. 1990); *Milton v. Cary Medical Center*, 538 A.2d 252, 256 (Me. 1988); *Amadio v. Levin*, 509 Pa. 199, 501 A.2d 1085, 1088-89 (Pa. 1985); *Vaillancourt v. Medical Center Hosp. of Vermont*, 139 Vt. 138, 425 A.2d 92, 95 (Vt. 1980); *Johnson v Superior Court of Los Angeles Cty.*, 123 Cal. App. 3d 1002, 177 Cal. Rptr. 63, 65 (Cal. App. 1981).

87. *See Eich v. Town of Gulf Shores*, 293 Ala. 95, 300 So. 2d 354, 358 (Ala. 1974); *Summerfield v. Superior Court of Maricopa Cty.*, 144 Ariz. 467, 698 P.2d 712, 724 (Ariz. 1985); *Hatala v. Markiewicz*, 26 Conn. Supp. 358, 224 A.2d 406, 407-08 (Conn. Super. Ct. 1966); *Worgan v. Greggo & Ferrara, Inc.*, 50 Del. 258, 128 A.2d 557, 558 (Del. Super. Ct. 1956); *Greater Southeast Community Hosp. v. Williams*, 482 A.2d 394, 397-98 (D.C. 1984); *Porter v. Lassiter*, 91 Ga. App. 712, 87 S.E.2d 100, 103 (Ga. App. 1955); Wade v. U. S., 745 F. Supp. 1573, 1579 (D. Hawaii 1990); *Volk v. Baldazo*, 103 Idaho 570, 651 P.2d 11, 15 (Idaho 1982); *Chrisafogeorgis v. Brandenberg*, 55 Ill. 2d 368, 304 N.E.2d 88, 91-92 (Ill. 1973); *Britt v. Sears*, 150 Ind. App. 487, 277 N.E.2d 20, 26-27 (Ind. App. 1971); *Dunn v. Rose Way, Inc.*, 333 N.W.2d 830, 833-34 (Iowa 1983); *Hale v. Manion*, 189 Kan. 143, 368 P.2d 1, 3 (Kan. 1962); *Mitchell v. Couch*, 285 S.W.2d 901, 906 (Ky. 1955); *Danos v. St. Pierre*, 402 So. 2d 633, 639 (La. 1981); State ex rel. *Odham v. Sherman*, 234 Md. 179, 198 A.2d 71, 73 (Md. 1964); *Mone v. Greyhound Lines, Inc.*, 368 Mass. 354, 331 N.E.2d 916, 920 (Mass. 1975); *O'Neill v. Morse*, 385 Mich. 130, 188 N.W.2d 785, 786 (Mich. 1971); *Verkennes v. Corniea*, 229 Minn. 365, 38 N.W.2d 838, 841 (Minn. 1949); *Rainey v. Horn*, 221 Miss. 269, 72 So. 2d 434, 439-40 (Miss. 1954); *O'Grady v. Brown*, 654 S.W.2d 904, 911 (Mo. 1983); *White v. Yup*, 85 Nev. 527, 458 P.2d 617, 623-24 (Nev. 1969); *Poliquin v. MacDonald*, 101 N.H. 104, 135 A.2d 249, 251 (N.H. 1957); *DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489, 495 (N.C. 1987); *Salazar v. St. Vincent Hosp.*, 95 N.M. 150, 619 P.2d 826, 830 (N.M. App. 1980); *Hopkins v. McBane*, 359 N.W.2d 862, 865 (N.D. 1984); *Werling v. Sandy*, 17 Ohio St. 3d 45, 476 N.E.2d 1053, 1056 (Ohio 1985); *Evans v. Olson*, 550 P.2d 924, 927-28 (Okla. 1976); *Libbee v. Permanente Clinic*, 268 Ore. 258, 518 P.2d 636, 640 (Or. 1974); *Amadio v. Levin*, 509 Pa. 199, 501 A.2d 1085, 1089 (Pa. 1985); *Presley v. Newport Hosp.*, 117 R.I. 177, 365 A.2d 748, 754 (R.I. 1976); Cert. of Question of Law from U.S. Dist. Ct., 387 N.W.2d 42, 45 (S.D. 1986); S.D. Codified Laws § 21-5-1 (1987); *Fowler v. Woodward*, 244 S.C. 608, 138 S.E.2d 42, 45 (S.C. 1964); Tenn. Code § 20-5-106 (1994);

"person" or "minor child" under their wrongful death statutes.

2. Baby Moses Laws

Another significant statutory change since the original decision of the Court in this cause of action is the new Texas law providing that a woman can simply abandon an "unwanted" child at a hospital, clinic or emergency room within sixty (60) days of birth with no questions asked and no threat of criminal prosecution.[88] Because of this new law, there is no longer a need to seek an abortion to avoid any "unwanted" burdens of motherhood. The effect is that the state of Texas will help the mother and is willing to assume all of the responsibilities, financial and otherwise, of raising the child. Since the Texas statute providing for dropping off an "unwanted" child was pioneered, forty (40) other states have enacted similar legislation.[89] In addition, Texas, along with all other states, will pay for all medical expenses associated with pregnancy for the needy. The Supreme Court in *Roe* was concerned with imposing upon the mother:

> "a distressful life and future...psychological harm...mental and physical health may be taxed by child care...the distress for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable,

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VaillanCourt v. Medical Center Hosp. of Vermont, 139 Vt. 138, 425 A.2d 92, 95 (Vt. 1980); *Moen v. Hanson*, 85 Wash. 2d 597, 537 P.2d 266, 268 (Wash. 1975); *Baldwin v. Butcher*, 155 W. Va. 431, 184 S.E.2d 428, 436 (W. Va. 1971); *Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14, 148 N.W.2d 107, 112 (Wis. 1967).

88. Tex. Fam. Code Ann. §§ 262.301 – 262.303, and § 262.105; Texas Penal Code §22.041(h).

89. *See* Ala. Code § 26-25-1 *et seq.* (2000); Ariz. Rev. Stat. § 13-3623.01 (2001); Ark. Code Ann. § 9-34-202 (Michie 2001); Cal. Health & Safety Code § 1255.7 (Deering 2000); Colo. Rev. Stat. § 19-3-304.5 (2000); Conn. Gen. Stat. § 17a-57 *et seq.* (2000); Del. Code Ann. tit. 16 § 907A (2001); Fla. Stat. Ann. § 383.50 *et seq.* (West 2000); Ga. Code Ann. § 19-10A-1 *et seq.* (2002); Idaho Code § 39-8201 *et seq.* (2001); § 325 Ill. Comp. Stat. 2/1 *et seq.* (West 2001); Ind. Code § 31-34-2.5-1 *et seq.*(Michie 2000); Iowa Code §233.1 *et seq.* (2001); Kan. Stat. Ann. § 38-15,000 (2000); Ky. Rev. Stat. Ann. § 405.075 (2002); La. Ch. Code art. 1701 *et seq.* (West 2000); Me. Rev. Stat. Ann. tit.17-A § 553 (2002); Md. Code Ann. Cts. & Jud. Proc. § 5-641 (2002); Mich. Comp. Laws § 750.135 (2000); Minn. Stat. § 145.902 (2000); Miss. Code Ann. § 43-15-201 *et seq.* (2001); Mo. Rev. Stat. § 210.950 (2002); Mont. Code Ann. § 40-6-401 *et seq.* (2001); N.Y. Penal § 260.03; Penal § 260.15; and, Soc. Serv. § 372-g (2000); N.C. Gen. Stat. § 7B-500 (2001); N.D. Cent. Code § 50-25.1-15 (2001); Ohio Rev. Code Ann. § 2151.3515 *et seq.* (Anderson 2001); Okla. Stat. tit. 10 § 7115.1 (2001); Or. Rev. Stat. § 418.017 (2001); Pa. Stat. Ann. tit. 23 § 6501 *et seq.* (2002); R.I. Gen. Laws § 23-13.1-1 *et seq.* (2001); S.C. Code Ann. § 20-7-85 (2000); S.D. Codified Laws § 25-5A-27 *et seq.* (Michie 2001); Tenn. Code Ann. § 68-11-255 (2001); Tex. Fam. Code Ann. § 262.301 *et seq.* (West 1999); Utah Code Ann. § 62A-4a-801 *et seq.* (2001); Wash. Rev. Code § 13.34.260 (2002); W. Va. Code § 49-6E-1 *et seq.* (2000); Wis. Stat. Ann. § 49.192 (West 2001); Wyo. Stat. Ann. § 14-11-101 *et seq.* (Michie 2003). *See generally* Baby Moses Project at www.babymosesproject.org.

psychologically and otherwise, to care for it."[90]

At the time *Roe* was decided, the laws allowing a mother to let the state bear all burden associated with raising a child did not exist, and the Court could not have known that any such law would ever be enacted. The burdens the Court was concerned about imposing upon a mother are no longer legally hers should she choose not to bear them. In light of such a dramatic change in law, the *Roe* decision is no longer based on sound legal or factual circumstances.

In a pressured or otherwise unplanned pregnancy situation, it is easy to see the difficulty the mother faces from the pregnancy, but until this Brief and the Rule 60 Motion for Relief From Judgment filed by Plaintiff presented new evidence, the Supreme Court could not effectively weigh the pain and difficulty of having an abortion. The choice for the woman is not to just "go back" to being non-pregnant as if it never happened; she cannot just "abort the mission" as in a movie. This going back to the pre-pregnancy status quo is how both Plaintiff Norma McCorvey and the Supreme Court viewed abortion at the time *Roe* was decided.[91] Now, because of the knowledge of the pain endured by women, Texas, and the other forty (40) states that have enacted abandoned children laws, offers a more compassionate option to women than, in the words of *Casey*, to say: "you bear the burden of the child alone." *Casey* stated:

> "The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear. That these sacrifices have from the beginning of the human race been endured by women with a pride that ennobles her in the eyes of others and gives to the infant a bond of love cannot alone be grounds for the State to insist she make the sacrifice. Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the mother's role, however dominant that vision has been in the course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society."[92] [Emphasis added]

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90. 410 U.S. at 153.
91. *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp. 1-14.
92. 505 U.S. at 852.

Now, Texas, and the other forty (40) states that have enacted abandoned children laws, offers more to women. A woman's "destiny" can still be shaped by her own conception of her place in society because she can separate herself from the child if it is still "unwanted" at birth, and for sixty (60) days thereafter. Now she can freely separate herself from the child without the guilt and shame that comes from the intentional killing of the woman's own child. If her circumstances improve over time, she is now free to reunite with her child, if she so desires and the child has not yet been adopted. Her opinion that she cannot care for the child is revocable now, not irrevocable, as with abortion. Her range of destiny shaping choices has been expanded and the range of her liberty is now greater than before.

In addition, *Roe* can be vacated without overturning *Griswold v. Connecticut,*[93] *Eisenstadt v. Baird,*[94] and *Casey v. Population Services.*[95] *Griswold,* "was far different from the opinion if not the holding of *Roe v. Wade.*"[96] Texas allows the sale of contraceptives, birth control, etc. with no interference, and in no way does the Rule 60 Motion filed by Plaintiff Norma McCorvey seek to change that. However, if those contraceptive methods fail, the State of Texas, and the other forty (40) states that have enacted abandoned children laws, are willing to raise the child, rather than force the burden on women. The states that have enacted abandoned children laws have accepted the view of some Justices in *Casey* that the inability to care for an "unwanted" infant is a cruelty to the child and an anguish to the parents and are now willing to accept that burden. This is a compassionate compromise which can end the national social division.[97] With the new abandoned children laws in effect, vacating the decision in *Roe* and *Doe* will eliminate killing the unborn child and remove

93. 381 U.S. 474 (1965).
94. 405 U.S. 438 (1972).
95. 413 U.S. 678 (1977).
96. 492 U.S. at 520.
97. 505 U.S. at 866-867.

the burden of raising an "unwanted" child from the woman. A woman would still be allowed the liberty to separate herself from her child, without killing the child, if the judgments in these two cases are vacated.

3. Increased Legal Protection For Pregnant Women Since 1973

There are far more legal protections available for pregnant women in all areas of law than existed in 1973. It is important to protect women's rights. Vacating the Court's decisions in *Roe* and *Doe* would in no way return women to a pre-1973 position with no rights. In a previous decision of the Supreme Court limiting *Roe*, *Casey* gave excessive weight to the argument that *Roe* was essential to women's overall position in society stating:

> But to do this [eliminate the issue of reliance] would be simply to refuse to face the fact that for two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.[98]

Today abandoned children laws and other post-*Roe* enacted legislation allows women to continue to organize their intimate lives as they see fit, with the consequences of failed contraception mostly now borne by the State, not women. Women can no longer be fired or discriminated against at work if they are pregnant, and they cannot be denied their right to an education because of pregnancy. In addition, impoverished women are given greater medical and social assistance by the State than at the time *Roe* was decided.

Women's rights are not inherently linked to the right to abortion. Other legal rights, like the right to vote, do not depend on the right to abortion. Furthermore, new evidence since 1973 shows

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98. 505 U.S. at 856.

the basic premises of the abortion rights movement are demeaning to women.[99]

III. SIGNIFICANT CHANGES IN FACTUAL CONDITIONS SINCE 1973

A. Since 1973, An Explosion Of Scientific And Medical Knowledge Has Occurred

In addition to the significant changes in decisional and statutory law since the original ruling of the Court in this cause, there have also been dramatic changes in factual circumstances and available scientific knowledge. Just as *Brown v. Board of Education,*[100] overturned *Plessy v. Ferguson,*[101] because subsequent facts showed that "separate but equal" had become inherently unjust, the new facts revealed in this Brief, in Plaintiff's Rule 60 Motion for Relief From Judgment, and which will be revealed in full detail at the evidentiary hearing requested herein, demonstrate that *Roe* is no longer just, but inherently unjust, and provide the decisional basis for the Court to vacate their previous ruling in this cause and in the companion case hereto, *Doe*.

At the time of the *Roe* decision, the Court stated that scientific, philosophical, and religious reasoning had not been able to determine when human life begins. The Court stated:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[102]

In previous decisions, the Court has treated the question of when human life begins as a matter of opinion, belief, or a point of view because it has never been presented with clear and compelling scientific evidence which allows the matter to be resolved objectively rather than through opinion. New scientific and medical evidence and advances in technology since 1973, as described herein

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99. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Client Intake Records From Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.
100. 247 U.S. 483 (1954).
101. 163 U.S. 537 (1896).

and as will be more thoroughly presented at the evidentiary hearing requested in this cause, clearly demonstrate that human life begins at conception and therefore the previous ruling in this cause should be vacated as it would be unjust to have prospective application.[103]

An explosion of medical and scientific knowledge regarding the humanity of the unborn child has occurred since the Court's original ruling in *Roe.* Advances in ultrasound technology now make it possible to see even the eyebrows and eyelashes of unborn children. It is now possible to successfully perform in-utero surgery on an unborn child at very early stages of pregnancy. The viability date of unborn children has continued to advance year after year, with infants born as early as twenty-one (21) weeks (halfway through the normal gestation period) surviving and living full, healthy lives. Improvements in neo-natal medical technology now make it possible for dramatically premature infants to live when just a few years ago they would not have survived. When considering a mother and her unborn child, the fact that the Court is dealing with two persons can be very clearly and solidly proven. DNA technology, previously unavailable to the Court, can remove any doubt in this regard. If a DNA sample from the mother's arm and one from her child in the womb are sent anonymously to a DNA testing lab for identification, the lab will report that two separate humans are reflected in the samples. If samples from the mother's arm and leg, parts of her "own body" were sent, testing would show only one person is involved, the same person.[104]

The United States Supreme Court decision in *Casey* elevated society's interest in what it called "potential life," yet failed to determine when human life begins. *Casey* stated: "and, depending on one's beliefs, for the life or potential life that is aborted."[105] Conceding in *Stenburg*

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102. 410 U.S. at 158-59.
103. *See* Scientific and Medical Analysis attached hereto in the Appendix, Tab H, pp. 5197-5347; *See also Agostini.*
104. *Id.*
105. 505 U.S. at 852.

v. Carhart,[106] that "millions of Americans believe that life begins at conception," the Court still did not resolved this issue, stating:

> Taking account of these virtually irreconcilable points of view, aware that constitutional law must govern a society whose different members sincerely hold directly opposing views, and considering the matter in light of the Constitution's guarantees of a fundamental individual liberty... We shall not revisit those legal principles again.[107]

The Court has treated the question of when human life begins as a matter of opinion, belief, or a point of view because until now it has not been presented with clear and compelling new scientific evidence which allows the matter to be resolved scientifically rather than through opinion. Justice Stevens has even characterized this as a matter of religious belief.[108] New scientific evidence shows that the question of when human life begins is not a religious matter. Plaintiff Norma McCorvey's new scientific evidence avoids any theological controversy, and leaves questions about the "sanctity" of life and the soul to religion.

B. New Factual Evidence Reveals The Abortion Industry Fails To Create A Normal Doctor-Patient Relationship

The Court in *Roe* made a non-evidence based assumption that an idealized doctor-patient relationship would exist between a woman seeking an abortion and the physician to perform the abortion.[109] That assumption is belied by the actual practices of the abortion industry since 1973. The real life experiences of the women that have had abortions and the individuals that have worked in abortion clinics since 1973 now shows that the abortion industry does not adequately protect women.[110] The Affidavits attached hereto, the Rule 60 Motion For Relief From Judgment, and the

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106. 530 U.S. 914 (2000).
107. 530 U.S. at 920. [Emphasis added] (Treating it as opinion rather than fact).
108. *Webster v. Reproductive Health Services,* 492 U.S. 490, at 566-67 (1989) (Stevens, dissenting).
109. 410 U.S. at 166.
110. *See* Affidavit of Plaintiff Norma McCorvey, attached hereto in the Appendix, Tab A, pp. 1-14; *see also* the Affidavits of More Than One Thousand Post-Abortive Women (hereinafter the "Women's Affidavits"), attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix,

testimony to be presented at the evidentiary hearing requested herein reveals new factual evidence that the abortion industry does not provide women with the protections of a true doctor-patient relationship, fails to provide women with the information necessary to truly make an informed decision regarding the procedure, fails to maintain the normal standards of health, safety, and professionalism required of medical personnel, regularly misleads or deceives women regarding the nature and development of their unborn children, and generally fails to adequately protect the mental and physical safety of women.[111]

In addition to the Women's Affidavits, the attached Affidavits from those who have actually worked in the abortion industry reveal that abortion clinic doctors and workers do not provide women with the information necessary to give informed consent to a radically invasive medical procedure.[112] Furthermore, physicians who perform abortions have a lower reverence for human life than doctors as a whole, because most doctors believe abortion is the taking of a human life and do not perform them. As a result, by the personal ethical refusal to perform abortions by most doctors, the abortionists as a group have a lower respect for human life, and specifically their women patients, than doctors as a whole. Many abortionists are in the abortion industry because of the large amounts of easy, cash money involved. As the Women's Affidavits show, clinic workers and abortionists commonly prey on fear, pain, and confusion to manipulate women into getting abortions.

Roe and *Casey* seem to aspirationally profess a belief that a physician is not just a mechanic of the human body whose services have no bearing on a person's moral choices, but one who does

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Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records From Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion clinic worker, attached hereto in the Appendix, Tab G, pp. 5189-5196.

111. *Id.*

112. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* Client Intake Records From Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion clinic worker, attached hereto in the Appendix, Tab G, pp. 5189-5196.

more than treat symptoms, one who ministers to the patient. However, the reality since *Roe* is that abortion clinics are in fact "cattle calls," not places of "ministry" as the Women's Affidavits reveal.[113] Group counseling, if any counseling is given at all, is typical. No "ministry" is given. Very little information or compassion is given. A normal doctor-patient relationship in the traditional or "ideal" model is rarely, if ever, established in the practice of abortion.[114] The abortionist does not in fact serve "the whole person" and thus in practice the high value traditionally placed on the medical relationship should not be given by the Court in the abortion context.

The new factual evidence presented in this Brief and as will be presented at the evidentiary hearing requested herein demonstrates that abortion is not simply the removal of unwanted tissue from a woman's body. It is misleading and deceptive to tell a woman a fetus is "a mass of tissue" or a "clump of cells" as the attached Women's Affidavits show women are told by abortionists. Any human being could be called just a "mass of tissue or cells," which humans are, but that would not make their intentional death "just." Are judges just a mass of tissue? It is partially true, but misleading, to call humans a mass of cells. Our law recognizes that human beings are innately more than a collection of tissue or cells. Yet women are told this lie by the abortion industry every day.[115]

The attached Affidavit testimony of more than a thousand women who actually had abortions shows the unproven assumption of *Roe* that abortion is "a woman's choice" is a lie. A "choice," a waiver of a constitutional right to the parent-child relationship, requires a voluntary decision with full knowledge. In addition to being coerced, women are also lied to and misled. Also, this most

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113. *See* the Women's Affidavits (which repeatedly reveal most women have virtually no real contact with the "doctor" other than the procedure itself), attached in the Appendix Tab B, pp. 15-1410; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

114. *Id.*

115. See the Women's Affidavits, Attached in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., pp. 1805-4307; *see also* the Client Intake Records From Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188;

"private" and quintessentially "personal" decision often has to be made in a group which inhibits questions. This new evidence regarding the inherent lack of informed consent and absence of the traditional physician-patient relationship protection in the abortion context was not available to the Court when *Roe* was decided. The following are representative responses found in the Women's Affidavits when post-abortive women were asked if they were adequately informed of the nature of abortion:

Affidavit Question:
Were You Adequately Informed Of The Nature Of Abortion, What It Is, What It Does?
(Affidavits All Collected Since 2000 Or Later, Dates And Cities Of Abortion Listed.)

"No. First doctor told me fetus of five weeks was no different than that of a frog." Kathleen. Port Chester, NY, May 12, 1975; and, Mamaroneck, NY, December 3, 1978. Women's Affidavits, Appendix Tab B, p. 107.

"No, I was not told anything about abortion. I was not counseled in any way. I was not told that it was a form of surgery or anything to that effect. I was handed papers to sign. No one went over them with me. I was too emotionally unstable to be signing any papers. No one told me of the risks I was taking." Tina, Atlanta, Georgia, 1985. Women's Affidavits, Appendix Tab B, p. 159.

"No, I was told they just took a piece of tissue out with suction." Wendy, Howell, NJ, 1985. Women's Affidavits, Appendix Tab B, p. 355.

"They did have a brief meeting before the abortion (in a group) where they explained the process, but did not tell about the possible side effects. They also kept referring to the baby as a group of cells, and they stressed the notion that it was not a baby." Shawn, San Antonio, Texas, 1988. Women's Affidavits, Appendix Tab B, p. 373.

"I was not told that it tears the baby apart piece by piece, that the baby would feel pain. I was not told about the years of emotional torment I would experience." Paula. Cleveland, OH, July, 1978. Women's Affidavits, Appendix Tab B, p. 84.

"No. I had no idea of the procedures, nor the physical or emotional consequences. I was never offered an alternative. I was put to sleep, put into a room to wake up and shoved out a rear door still half asleep." Lillian. CA, February, 1982. Women's Affidavits, Appendix Tab B, p.123.

"No, as to what abortion is, I was told that it was a simple and safe procedure. That was all I was told. As to what abortion does, I was given a sheet of statements written by doctors because I had asked the nurse what abortion does, that I had reservations about the procedure based on my

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see also the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

religious beliefs. The doctors said (not exact words) 'Pregnancy tissue is nothing more than a blob to be extracted. There is no real evidence to suggest life at pregnancy, only products of conception.'" Paula. Madison, Wisconsin, February, 1991. Women's Affidavits, Appendix Tab B, p. 817.

Under the assumptions of *Roe* and *Casey*, women were to be "free" to make their own decision about whether to abort or carry a child to birth.[116] This assumes that they are free from pressure or coercion, and that their physician has provided them with complete and adequate knowledge of the nature of abortion and its long term consequences. The women who have experienced abortion testify in sworn Women's Affidavits how they were not informed of the consequences. The following statements are representative samples:

"Women Testify To Affidavit Question: Were You Adequately Informed Of The Consequences Of Abortion?"

"No. Not at all. I was encouraged by the abortion clinic doctors that it was painless and without consequences." Cheryl. Los Angeles, CA, 1970; and, Long Beach, CA, 1973. Women's Affidavits, Appendix Tab B, p. 27.

"No – I didn't know there were any consequences. Everyone acted like it was nothing – no big deal." Christina. Newark, DE, 1986; and, Dover, DE, 1988. Women's Affidavits, Appendix Tab B, p. 375.

"No. I didn't know that the hurt would never go away. Any future physical problems were not discussed." Dianne. Long Island, NY, 1971. Women's Affidavits, Appendix Tab B, p. 376.

"Looking back I remember being told it was the right thing to do. I was told the difficulties of being a mother and raising a child. I was so young and had my whole life ahead of me. There were so many girls there that day." P.C.O. Shreveport, LA, 1983. Women's Affidavits, Appendix Tab B, p. 1002.

"I do not recall being told of any serious consequences, physically, emotionally or psychologically. The Santa Ana Health Department where I had the pregnancy test advised me that I couldn't afford to have the baby." Rashelle. Orange, CA, 1984. Women's Affidavits, Appendix Tab B, p. 1150.

"No. I was told there were no side effects." Amy Marie. Denver, CO, June 24, 1995. Women's Affidavits, Appendix Tab B, p. 1159.

"I was not informed of any consequences of the abortion. I was not told of the emotional or physical

116. 505 U.S. at 851-852.

consequences. While I was still under the effects of the sedation, but after the procedure was completed, I began loud, uncontrollable sobbing. I remember coming out from under the anesthetic hearing the nurse telling my mother that I had been crying uncontrollably. I don't know when I started sobbing, but I can say that even though my body had been numbed to the pain, my mind had not. I can honestly say this was and is the lowest day of my life." Debra. Houston, TX, February 22, 1984. Women's Affidavits, Appendix Tab B, p. 1202.

"No. No one told me that I would hear cries in the middle of the night." Brandy. Georgia, October, 1987. Women's Affidavits, Appendix Tab B, p. 1251.

The above Affidavit excerpts demonstrate that the assumption that the Court made in *Roe* that the normal physician-patient relationship would exist in the abortion context and provide the woman with the protection of informed consent is untrue. Until now the Court has been unable to accurately weigh the harmful effects on women from abortions, while considering only the burdens of going forward with pregnancy.[117] In light of this new factual evidence, the Court's decision in *Roe* should be vacated.

C. New Factual Evidence Reveals The Harmful Effects Of Abortion On Women

New factual evidence regarding the physical and mental consequences of abortion on women, the result of more than thirty (30) years of legalized abortion, is now available to the Court. Abortion was illegal and relatively rare in most states in 1973.[118] No evidence existed then regarding how widespread legalized abortion would actually affect women. The Court assumed that abortion would be good for women, and made many other non-evidence-based assumptions.[119] The Court assumed abortion was just like any other medical procedure because the long-term effects of abortion on women were unknown at the time.[120]

Based on the little evidence before it, the Court knew that unplanned and inconvenient

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117. *See* e.g. Justice Blackmun's dissent as *Webster* weakened *Roe* that it "would clear the way again for the State to conscript a woman's body and to force upon her a "distressful life and future." *Webster,* 492 U.S. at 557 *citing Roe,* 410 U.S. at 153.
118. 410 U.S. at 118, n2.
119. *Id.*

pregnancies could put severe pressure on women and that women needed help and compassion in such situations.[121] The Court gave great consideration to the burden on women in unplanned and vulnerable pregnancies, as it should.[122] The Court, however, had no evidence or experience on whether abortion would in fact help or hurt women in the long run. Evidence regarding the effect of massive numbers of legal abortions was not presented to the Court, because it was unavailable at the time this cause was originally decided.

By 1992, the Court in *Planned Parenthood v. Casey*[123] was beginning to understand the greater ramifications of abortion to women and did not treat it as just another medical procedure with no more consequences than a tonsillectomy. *Casey* began to recognize:

> Though the abortion decision may originate in the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act. It is an act fraught with consequences. . .[124]

Casey recognized that abortion is unlike any other medical procedure and has severe ramifications.[125] However, the Court has not heard from women how abortion actually affects women physically and emotionally. Abortion is a short-term "solution" with long term consequences, as new evidence since 1973 demonstrates. This is the Court's first opportunity to consider and weigh this new factual evidence.

The Court has previously been unable to hear and review evidence about the effect of abortion on women's physical bodies and consciences. The conscience and the regret it experiences as a result of abortion does not go away with alcohol, drugs, promiscuous sex, or divorce. It remains throughout the years as a grievous reminder of the woman's experience of abortion and the unborn

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120. *Id.*at 149-150.
121. *Id.*at 153.
122. *Id.*
123. 505 U.S. 833 (1992).
124. *Id*

child that she lost.[126] The evidence found in the attached affidavits and as will be presented at the evidentiary hearing requested herein reveals that abortion strips women of their dignity, and is permanently damaging to their sense of self-worth.[127]

The Court of Appeals for the Fifth Circuit has recently cited testimony, rather than non-evidence based assumptions, that abortion as practiced is "almost always a negative experience for the patient..."[128] The Court of Appeals struck down Texas abortion facility regulations that required Texas abortions to be done in a manner that enhanced women's "self-esteem" and "dignity."[129] The reality is that one simply cannot objectively perform an abortion and enhance a woman's dignity and self-esteem at the same time. It is always a tragic decision. The Court struck down the Texas regulation that abortionists perform abortion in a manner that ensures that women experience abortion with "dignity" and "self-esteem" as unconstitutionally vague and unenforceable.[130]

The Court in *Roe* assumed that the ability to obtain an abortion would benefit women's dignity and self-esteem. However, the facts recited by the Court of Appeals for the Fifth Circuit are consistent with the more than one thousand Women's Affidavits attached to this Brief from women who have experienced abortions themselves. The decision in *Women's Medical Center,* and the attached Women's Affidavits totally refute the non-evidence based assumptions in *Roe* and *Casey* that abortion enhances female dignity and self-worth. The attached Women's Affidavits are the largest body of direct, sworn evidence in the world about the true, factual effects of abortion on a

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125. *Id.*
126. See the Women's Affidavits, Attached in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records From Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.
127. *Id.*.
128. 248 F. 3d 411, 418.
129. *Id.*

woman's dignity, self-esteem, and self-worth. Our country now has more than thirty years of experience with post-abortion trauma victims. The attached Affidavit testimony of more than a thousand women who have suffered the effects of abortion demonstrates the evidentially provable, devastating effects of abortion upon women in a way that has never been shown to the Court before.

As Plaintiff Norma McCorvey and the women that have experienced abortion now know, and now show the Court, there is a vast difference between considering an abortion and experiencing one. There is a vast gulf between intellectually supporting abortion and experiencing one. *Casey*, unlike *Roe,* recognizes the "devastating psychological consequences" to a woman who later finds that her decision was uninformed. The Women's Affidavits also show that it is extremely difficult, if not inherently impossible, for a woman to fully understand the long-term consequences of the decision prior to actually experiencing the abortion itself.

1. Psychological Effects of Abortion on Women

Women are overwhelmed with the guilt and depression of abortion for years after having an abortion.[131] In the attached Women's Affidavits, post-abortive women were asked: "How has your abortion affected you?" The following are a representative selection of their sworn answers from the Appendix, Tab B, Post-Abortive Women's Affidavits. Only the first name or initials of the women are used to protect their confidentiality, followed by the date, city and state of the abortion.

a. Post-Abortive Women Testify: How Has Your Abortion Affected You? (Affidavits All Collected Since 2000 Or Later, Dates And Cities Of Abortion Listed.)

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130. *Id.*

131. See the Women's Affidavits, Attached in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Client Intake Records From Pregnancy Care Centers, attached hereto in the Appendix, Tab F, pp. 4308-5188; *see also* the Affidavit of Carol Everett, former abortion provider, attached hereto in the Appendix, Tab G, pp. 5189-5196.

"My abortion has affected me in numerous ways. I felt tremendous guilt and confusion in the recovery room. I felt I had done something terribly wrong but didn't understand why I felt that way. I was very depressed and withdrawn afterward and could not talk about what I was feeling. I was unable to discuss the abortion for many years, despite my husband trying to discuss it with me. I never revealed my abortion as part of my medical history. It affected my relationship with my husband for over 20 years. I worried about being punished for killing my baby and feared I would lose my children after they were born." Susan. Fort Worth, TX, March, 1977. Women's Affidavits, Appendix Tab B, p. 58.

"It affected my whole life. I felt guilty and ashamed. I felt I didn't deserve good things. I immediately gained lots of weight and drank. I later married someone I shouldn't have then divorced. I felt it poisoned everything I thought, felt or did." S.M.P. Bellingham, WA, July 29, 1985. Women's Affidavits, Appendix Tab B, p. 1016.

"It devastated me. I had nightmares, flashbacks, fits of rage, uncontrollable crying, trouble sleeping, and could not look at pregnant women or children without feeling hurt, anger, and guilt." Amy Marie. Denver, CO, June 24, 1995. Women's Affidavits, Appendix Tab B, p. 1159.

"At first, I cried all the time, felt lost and lonely like a part of me was ripped out. I wondered what he/she looked like, the color of eyes, how many fingers and toes, what color hair. I was devastated for years." Natalie Ann. Memphis, TN, 1983. Women's Affidavits, Appendix Tab B, p. 1187.

"Twenty-five years later, I still cannot talk about it without tears and pain in my heart. I will always bare [sic] the scars of my aborted children on my heart." Scherrie. Overland Park, KS. Women's Affidavits, Appendix Tab B, p. 1199.

"You never forget it. You always look to see what the child would look like, as much as I love kids. I now have three. The child would be older. In my own way I have had my own death anniversary." Brandy. Georgia, October, 1987. Women's Affidavits, Appendix Tab B, p. 1251.

b. Post-Abortive Women Testify: Based On Your Own Experiences, What Would You Tell A Woman Considering An Abortion?

The Supreme Court in its effort to give women more "liberty" and freedom,[132] had no actual experience or evidence before it about the actual effect of an abortion on a woman. Now, new evidence is available from the experiences of post-abortive women who have actually exercised the freedom the Court gave them. The Women's Affidavits reveal what that "freedom" cost them. They

132. 505 U.S. at 844.

describe the pain from their personal knowledge, not speculation or assumptions. The Women's Affidavits show what the women scarred by the exercise of that freedom would tell other women and the Court considering an abortion based on actual experience. The following are representative samples of what they testify:

Post-Abortive Women Testify: Based On Your Own Experiences, What Would You Tell A Woman Considering An Abortion?
(Affidavits All Collected Since 2000 Or Later, Dates And Cities Of Abortion Listed.)

"Don't do it. You cut off your own soul when you take the life of your child. You will deeply regret not experiencing the life of your child. The mental and emotional damage is beyond description. It's torture." Sandra. Atlanta, GA, March 19, 1975. Women's Affidavits, Appendix Tab B, p. 516.

"Not to have one. Listen to your gut instinct, which tells you this is a baby and as a mother you naturally want to take care of it, not kill it. That if I could do it over again, I would not let it happen again." I.S.A. San Antonio, TX, February, 1994. Women's Affidavits, Appendix Tab B, p. 260.

"It never goes away and you will always think of what could have been and the anger of how the government allows this hideous procedure." Nora. GA, 1990. Women's Affidavits, Appendix Tab B, p. 304.

"If you ever want to have more than one child, if you want to save your sanity. [sic] There is a lot of pain, and blood. Unbelievable pain. Depression, grief! Lots of grief." M.A.C. Beaumont, TX, 1983. Women's Affidavits, Appendix Tab B, p. 315.

"I tell them about the development of the baby and I tell them about the hell I went through. About hearing babies cry when none were around, being suicidal, an alcoholic." Kathy. Tulsa, OK, June 20, 1969. Women's Affidavits, Appendix Tab B, p. 530.

"You can always give your baby to someone who wants to love a child but <u>YOU CAN NEVER UNKILL YOUR BABY</u>!! You are already a mother – You can have a live baby or a dead one." Judy. Birmingham, AL, Spring, 1974. Women's Affidavits, Appendix Tab B, p. 560.

The Affidavit of Dr. David Reardon, who has done years of research regarding the effects of abortion on women, the Affidavit of Dr. Theresa Burke, a clinical psychotherapist who has counseled hundreds of post-abortive women, and the testimony and evidence that will be presented at the evidentiary hearing requested herein, further demonstrates what we now know about the

devastating psychological consequences of abortion. [133]

2. Suicide

There are many adverse affects of abortion, as the Women's Affidavits describe so vividly. One of the effects is suicide, but the women who have committed suicide can no longer testify. The suicide rate for women who have had an abortion is significantly higher than for those who carry their pregnancies to term.[134] Abortion is now scientifically known to cause emotional as well as physical damage to women. This scientific knowledge was previously unavailable to both the Plaintiff herein as well as the Court in 1973. Abortion can lead to depression and anxiety and other mental disorders.[135] In order to deal with this, many women turn to suicide. As a result of the shame and guilt women experience as a direct consequence of abortion, many women feel they do not deserve to live, as the Women's Affidavits demonstrate repeatedly. The shame that they feel often prevents them from seeking help through family, friends, counseling or spiritual advisors. The resulting feeling of isolation leads to severe depression and a search for a way out, such as suicide. It is clear from the evidence, that rather than helping women, abortion hurts women. Women and men who have never experienced abortion cannot know this pain in advance. After abortion, the pain and the guilt may lead to more self destructive behaviors, including more abortions.[136]

3. Physical Complications From Abortion

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133. *See* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Affidavit of Theresa Burke, Ph.D., attached hereto in the Appendix, Tab D, pp. 1422-1667.
134. *See* Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307.
135. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Dr. Theresa Burke, attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of David Reardon, Ph.D., attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307.
136. *See* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410; *see also* the Affidavit of Dr. Theresa Burke, attached hereto in the Appendix, Tab D, pp. 1422-1667; *see also* the Affidavit of Dr. David Reardon, attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307.

As the attached Women's Affidavits and the new scientific evidence to be presented at the evidentiary hearing requested herein demonstrate, there are many physical complications that can result from abortion. These complications include but, are not limited to: increased bleeding in subsequent pregnancies, infertility, miscarriages, increased risk of breast cancer, tubal or ectopic pregnancy, pelvic inflammatory disease, uterine perforations, increased risk of breast cancer, placenta previa, and retention of placenta increased in subsequent pregnancies. [137] Complications from all types of abortions, as described in the Gale Encyclopedia of Medicine, include "uncontrolled bleeding, infection, blood clots accumulating in the uterus, a tear in the cervix or uterus, missed abortion where the pregnancy continues, and incomplete abortion where some material from the pregnancy remains in the uterus." All of these complications are not only hazardous to the immediate well being of the mother, but they can also have lasting effects on her health and the health of her subsequent children.

The following excerpt from the Women's Affidavits document the pain of the abortion itself:

"I remember the procedure being very, very, very painful." "I was never told that I could be, and was in labor for 18 hours, delivered baby with no one present. Nurse came in room with doctor, umbilical cord was cut, baby placed in bucket on food tray cart in my room." MEA, Women's Affidavits, Appendix Tab B, p. 17.

4. Abortion Is Often The Result Of Coercion From Relatives, Sexual Partners, Or Circumstances

The Supreme Court in *Roe* and *Casey* assumed that abortion would be a voluntary choice. Rather than being the result of a knowing, voluntary, dignity-enhancing woman's choice, the attached Women's Affidavits from more than a thousand women who have had abortions reveal that abortion is almost always the result of pressure or coercion from sexual partners, family members,

137. *See* Affidavit of Dr. David Reardon, attached hereto in the Appendix, Tab E, pp. 1668-1804, Exhibits to Affidavit of David Reardon, Ph.D., Appendix Tab E, pp. 1805-4307; *see also* the Women's Affidavits, attached hereto in the Appendix, Tab B, pp. 15-1410.

abortion clinic workers or abortionists, or circumstances. Of course, women are intelligent beings capable of making rational, informed decisions. However, it is difficult in a pressured pregnancy situation to make a rational, informed decision under such extreme circumstances with so little truthful information provided.[138]

Women in vulnerable pregnancies are denied their right to legal protection and are instead pressured to abort immediately. In what amounts to a denial of equal protection, women who feel they cannot handle a child and want to consider the child for adoption receive legal protection from coercion and undue influence, but women in the same situation who go to an abortion clinic, receive little or no protection. Many women testify that they would have never considered an abortion, if it were not legal. Many testify that the "abortion choice" gave freedom to others to pressure them. If abortion were not legal, a man could not so easily say, "it's your problem." If it were not legal, parents could not pressure teens. Women were asked, "did anyone pressure you into having an abortion?" The following are representative replies from the Women's Affidavits:

Post-Abortive Women Testify: Did Anyone Pressure You Into Having An Abortion?

"Yes, my family and the counselor at the clinic." Jennifer. Glenwood Springs, CO, December, 1980. Women's Affidavits, Appendix Tab B, p. 584.

"Yes. Mostly my parents but also my then boyfriend." Janet. Madison, WI, December 6, 1975. Women's Affidavits, Appendix Tab B, p. 641.

"I would say it was more peer pressure; several of my friends had had an abortion." Jana. Houston, TX, February, 1979. Women's Affidavits, Appendix Tab B, p. 682.

"Yes, my fiancé at the time." Cori Elizabeth. Charlotte, NC, July, 1995. Women's Affidavits, Appendix Tab B, p. 780.

D. New Factual Evidence Regarding The Court's Decision In Doe v. Bolton

New facts, previously unavailable to the Court have been revealed regarding the decision

138. *See* the Women's Affidavits (examples of impairment of decision making capacity), attached hereto in the

made in *Doe v. Bolton* as well. Sandra Cano was the "Mary Doe" of *Doe v. Bolton,* the companion case to *Roe*. The attached Affidavit of Sandra Cano reveals new facts regarding her case that were previously unavailable to the Court. [139] Her Affidavit shows that the facts regarding her situation was seriously misrepresented to the Court in her case. The affidavit of Sandra Cano reveals facts which if known at the time would probably have prevented the Supreme Court from erroneously creating the "health" exception to *Roe's* trimester framework. Her affidavit demonstrates her own desire that the decision in her case be overturned.[140]

IV. OTHER FACTORS TO CONSIDER

A. Fourteenth Amendment Due Process Principles

Plaintiff Norma McCorvey believes the evidence contained in this Brief in Support and as will be presented at the evidentiary hearing requested herein shows that the unborn child is a human being entitled to legal protection as a matter of scientific fact. In the alternative, advances in the law of "due process" should cause the Supreme Court to resolve all doubt, if any, in favor of life at conception until proven otherwise. The Fifth and Fourteenth Amendments to the Constitution specifically protect "life, liberty, and property" from deprivations "without due process of law." As such, they embody the Declaration of Independence principle that "we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, and that among these are life, liberty, and the pursuit of happiness." Because of this operative principle of our Constitution, rooted in fundamental notions of justice, our law has consistently implemented two fundamental principles of due process for the protection of life. These are "innocent until proven guilty" and "proof beyond a reasonable doubt." These are the operative

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Appendix, Tab B, pp. 15-1410.
139. *See* Affidavit of Sandra Cano Saucedo, attached hereto in the Appendix, Tab C, pp. 1411-1421.
140. *Id.*

principles of our criminal justice system designed to "err on the safe side" in order to prevent the wrongful removal of life, liberty, or property without due process of law. These principles are specifically designed to protect life, liberty, and property and became operative with the "due process of law" clauses in the Fifth and Fourteenth Amendments to the United States Constitution. If the Supreme Court adheres to the fundamental principal that life is worthy of legal protection as an operative principle of our Constitution, and we also adhere to "innocent until proven guilty" and "proof beyond a reasonable doubt" as fundamental principles of due process, we are thereby bound by the terms of these principles to adhere to "life at conception until proven otherwise."

If the Court does not know when life begins, as *Casey,* and *Stenberg* assume (ignoring for the moment the scientific DNA evidence that now proves one has human life at conception), the protection of life component of these operative principles of due process obligate us to "err on the safe side" in determining how we resolve the abortion question. This means the Constitution must assume all unborn children in the womb are human life from conception forward until it can be proven scientifically otherwise beyond a reasonable doubt. If eleven members of a jury are convinced of guilt, yet even one member is not convinced of guilt beyond a reasonable doubt, we do not put a human to death. If there is any reasonable doubt, we err on the side of life. Even a hunter does not shoot until he knows it is a deer and not a human in the trees. The result of being on the wrong side is catastrophic when life is the issue. Therefore, "life at conception until proven otherwise beyond a reasonable doubt" must be the Constitutional standard in abortion. Until either "proof beyond a reasonable doubt" disproves the life of unborn children in the womb or until the United States eliminates "innocent until proven guilty" and "proof beyond a reasonable doubt" as operative due process Constitutional principles, *Roe* should not stand.

B. The American People Do Not Accept Roe As Just

While the meaning of the Constitution does not depend on today's opinion polls, the American people cannot accept the injustice of abortion, nor should the Supreme Court, though it has tried very hard to resolve the dispute in favor of abortion. According to *Casey,* one of the judicial purposes of *Roe's* constitutionalizing the national debate on abortion was "to resolve the sort of intensely divisive" controversy and "call the contending sides to end their national division."[141] The Court cited *Brown v. Board of Education*[142] as such a case also. Yet while *Brown* eventually did successfully end the national debate on segregation because it was just, *Roe* still has not ended the national controversy over abortion because the new evidence to support this motion and new understanding of the factual conditions show it is not just. The nation is even more sharply divided today over the issue of abortion than in 1973. Sixteen years after *Roe*, Justice Blackmun himself still called abortion, "the most politically divisive domestic issue of our time."[143]

Roe and *Doe* still have not been accepted by the American people as expressing legitimate Constitutional values. Seventy-three percent of Americans support making abortion illegal with exceptions, or making all abortion illegal.[144] *Roe* and *Doe* are still the most controversial decisions of the Supreme Court in American history since *Dred Scott* and *Plessy v. Ferguson. Roe* and *Doe* have never received a consensus of legitimate constitutional status in American public opinion. Major polls over long periods clearly indicate it is a majority, not a minority, who believe there should be greater due process restrictions on abortion. Why? Because most Americans believe abortion is unjust.

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141. 505 U.S. at 866-67.
142. 247 U.S. 483 (1954).
143. *Webster v. Reproductive Health Services*, 492 U.S. 490, at 559 (1989) (Blackmun, dissenting.)

C. Members Of The Judiciary Do Not Accept *Roe* As Just

Despite thirty years of existence, *Roe* is still criticized by members of the Supreme Court itself, even after *Casey* attempted to end the controversy for all time.[145] Other state and federal judges and scholars have criticized *Roe* and *Casey*.[146] In 1973 in *Roe* the Supreme Court imposed a minority morality on the nation, ignoring the desires of most citizens and the decisions of almost all state legislatures at the time.[147] The Supreme Court may have been truly concerned with finally ending this controversy for the good of the nation, but *Roe* and *Doe* and *Casey* have failed to do so. "The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the nation to which it is responsible."[148] The desire of the Court to end the controversy seems heartbreakingly sincere, yet time has demonstrated its futility. Confirmation of judicial nominations of well qualified individuals have been put on hold repeatedly because of their views on abortion. The integrity of the whole judicial selection process has been compromised since 1973. A better way to end this judicial and social controversy is to return the matter to the political process by de-constitutionalizing it and let Federalism take its course.

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144. May 1999. CNN/Gallup/USA Today Poll www.therealfacts.org

145. "*Casey*... is wrongly decided." *Stenberg v. Carhart,* 530 U.S. 914, 952 (2000) (Rehnquist, J., dissenting). "*Casey* must be overruled." (Scalia, J.,dissenting) *Stenberg v. Carhart*, 530 U.S. 914, 955 (2000). Justice Scalia has also said: "I am optimistic enough to believe that, one day, *Stenberg v. Carhart* will be assigned to its rightful place in history with *Korematsu* and *Dred Scott* ." *Stenberg* at 953 (dissenting) (*Korematsu* allowed Japanese -American internment). Justice Thomas has stated: "*Roe's*... decision was grievously wrong." *Stenberg,* 530 U.S. at 980, (dissenting, joined with Chief Justice Rehnquist and Justice Scalia). Chief Justice Rehnquist, concurring in part and dissenting in part, joined by Justices White, Scalia and Thomas stated: "We believe that *Roe* was wrongly decided, and that it can and should be overruled consistently with our traditional approach to *stare decisis* in constitutional cases." *Casey*, 505 U.S. 833, 944.

146. In a concurring opinion regarding denial of summary judgment in a conflict over appropriate licensing of a doctor's office, Judge McDonald states: "It is my belief though that eventually the majority opinion of *Roe* will be buried as an atrocity and rightfully recognized as one of the most immoral laws of humankind, comparable to the holding in *Dred Scott v. Sanford*, 60 U.S. 393, 19 Howard 393, 15 L.Ed. 691 (1856), and the 1935 Nuremberg Laws of the German Third Reich." *Cabinet for Human Resources v. Women's Health Services, Inc.*, 878 S.W.2d 806 at 809 (Ky. App. 1994).

147. 410 U.S. at 139-140, n. 34-36.

148. 505 U.S. at 868.

D. The Executive Branch of the United States Government Has Never Accepted Roe As Just

Even the United States Government has never accepted *Roe v. Wade,* often calling for its reversal in major Supreme Court cases questioning abortion.[149]

E. Post-Abortive Women Do Not Believe Roe Is Just

The issue before this Court is whether it is no longer just to allow *Roe v. Wade* to have prospective application. The most important evidence before this Court are the attached Women's Affidavits from more than a thousand women who have experienced abortion personally. They provide the Court with its first look at actual evidence of how abortion affects women. Like the Supreme Court, some of these women thought abortion would be the answer to their maternity problem. They were told by the abortion industry that abortion was a simple, painless, safe procedure and not warned of any adverse consequences. These post-abortive women have experienced pain and horrible consequences from their decision. After asking about their abortion and how it affected them, the last question on the Affidavit asks them about the justice of their abortion. Representative examples of their responses follow:

Post-Abortive Women Testify: Based On Your Own Experience, What Would You Tell A Court That Believes Abortion Should Be Legal?
(Affidavits Collected Since 2000, Date And City Of Abortion Given.)

"Listen to those voices of those who have experienced the physical and emotional consequences. A whole segment of society – men and women – are suffering because they did what was wrong even though it was legal." Shirley. Los Angeles, CA, 1982; and, Norway, 1970. Women's Affidavits, Appendix Tab B, p. 89.

"Women are in emotional shock when faced with a "surprise" pregnancy. Show the true picture of a 6-8 week fetus – one that looks an inch long that is perfect – I now work in surgery and have seen a perfect 1 in. long BABY with a beating heart – it was a tubal pregnancy so we had to end its

149. *See Webster v. Reproductive Services*, 492 U.S. at 521; *See also Casey*, 505 U.S. at 844 (the "United States, as it has done in five other cases in the last decade, again asks us to overrule *Roe v. Wade*.")

life to save the mother. That beating heart changed my whole view and attitude – The public thinks its only tissue" Mary Ann. Miami, FL, June, 1966; and, Washington D.C. Women's Affidavits, Appendix Tab B, p. 195.

"They are wrong. Life begins upon conception and it is wrong to change the definition of conception to suit their own agenda. They are the first in the chain of killers." R.A.C. San Antonio, TX, 1984. Women's Affidavits, Appendix Tab B, p. 260.

"That women deserve to know the truth! That abortion kills babies, that it hurts women physically and emotionally! That it does not end when you leave the clinic. There is such a thing as post-abortion syndrome and I had it. I WONDER HOW MANY WOMEN HAVE TRIED TO COMMIT SUICIDE OVER THEIR ABORTION. I WONDER HOW MANY HAVE SUCCEEDED! MOST OF ALL I WONDER IF YOU EVEN CARE!" L.M.C., Memphis, TN. Women's Affidavits, Appendix Tab B, p. 295.

"This is the horror of our generation – I believe that this abuse to women needs to be outlawed – There is a tendency to...believe if it is legal it is right. – This is so wrong." Linda. TX. Women's Affidavits, Appendix Tab B, p. 384.

"I would tell them that they are helping to send women to hell. They take better care of dogs than they do of human beings. These are children that feel pain and have a right to live." Kathy. Tulsa, OK, June 20, 1969. Women's Affidavits, Appendix Tab B, p. 530.

"All they would need to see is the pain, sorrow and grief that I carry with me for the rest of my life. We save whales, trees and so many other things in this country, yet we slaughter innocent, precious children every day. We wonder why our country is in the shape it is? Oh, please." Victoria. Charlotte, NC, 1987 and 1988. Women's Affidavits, Appendix Tab B, p. 763.

"I would tell them that I was raped and therefore "justified" in my abortion, but it didn't change a thing. I still suffered because I was led to believe that taking my child's life was okay. It was not and I have been living with that for almost five years." Candice. San Diego County, California, March, 1996. Women's Affidavits, Appendix Tab B, p. 802.

"I live it. I know it is wrong. I know what it is like to live each day with the mental torture of knowing that I killed my own children. It all looks simple on paper and seems like an easy way out of a bad spot, but know one tells you that the easy way out will cost you later in emotional damage and physical problems." Scherrie. Overland Park, KS. Women's Affidavits, Appendix Tab B, p. 1199.

F. SOCIAL CHANGES SINCE 1973

There have been dramatic social and demographic changes in the United States since *Roe* was decided. We now have the ability to clone a human being, not present in 1973. Are human clones

"persons?" Why protect cloned humans from slavery or involuntary organ donation if a clone is not a person? Clearly cloning was not contemplated when the Fourteenth Amendment was adopted. Will clones have no legal protection?

Unforeseen demographic effects of abortion show that *Roe*'s population control assumptions are no longer valid and abortion hurts the United States demographically. The Social Security System in the United States is in financial crisis because 43 million Americans have not been born because they were aborted. Abortion has increased child abuse rather than decreasing it as abortion advocates predicted if there were no unwanted children. Contraception today is more effective and widely available, unlike in 1973. Child support is state enforced and widely available. Abortion disproportionately kills minorities and the poor.

G. Abortion Is The Terminating Of The Parent-Child Relationship

Abortion is more like terminating the parent-child relationship through adoption than anything else. The mother-child relationship is irrevocably terminated in both adoption and abortion. Yet society protects the vulnerable woman in adoption. Her signature waiving her right to the child is not binding until after childbirth. A majority of women who feel they cannot handle a child and want to place their child for adoption eventually change their mind and keep their child. Yet her signature in an abortion clinic on the "consent" form means her child is permanently, irrevocably, violently taken away from her. The same seventy to eighty percent of women who would later change their minds and keep the child are given no chance to reconsider. Plaintiff Norma McCorvey will request the opportunity for further briefing on this point.

H. Grievous Injustices Including Slavery, The Holocaust, And The Slaughter Of Native Americans Have Occurred When Courts Have Refused To Recognize That All Human Beings Have Protectable Legal Rights As Persons.

Medical science now clearly shows that a new human life begins at conception. With 46

chromosomes, it is a member of our species and no other. To say that this new human being from the moment of conception is not a person in the legal sense is to say that there are human beings who are not persons. Whenever societies have done this, injustice has been the result. A tragic example from our nation's history is slavery. The Thirteenth and Fourteenth Amendments were passed to correct the awful injustice of denying personhood to human beings. *Roe* created an unjust abortion right without a constitutional amendment, so it can be corrected by the Court. *Roe's* type of thinking, that there can be non-person humans, laid the groundwork for some of our nation's darkest moments in the area of slavery.

In *Dred Scott v. Sanford*[150] the Supreme Court when addressing the personhood of African Americans said that constitutionally they are "...beings of an inferior order..." Constitutionally, African Americans would be treated as "an ordinary article of merchandise and traffic...".[151] Clearly the passage of time has convinced us this was an unjust decision by the United States Supreme Court.

Under the German Third Reich, its Reichstag passed the 1935 Nuremberg Laws which, under Article 2 of the Enabling Act for purposes of racial hygiene, referred to the personhood of Jews as sub-human, an "inferior race," so as to prevent racial "defilement" of German blood. The law created in *Scott v. Sanford,* [152] and the Nuremberg Laws at least granted some status to the persons involved, repugnant as it was. African Americans were classified not as citizens, but as property, and Jews were reduced to a condition of being not quite human. In *Roe*, the personhood of the unborn child is completely ignored which allows their death.

I. What Is Justice?

150. 60 U.S. 393 (1856).
151. *Id.* at 407.
152. *Id.*

According to Rule 60(b), *Roe v. Wade* should no longer be given prospective application if it is no longer just and equitable. What is justice? According to The American Heritage®Dictionary of the English Language, Fourth Edition, 2000, justice is:

1. The quality of being just; fairness.
2. a. The principle of moral rightness; equity.
   b. Conformity to moral rightness in action or attitude; righteousness.
3. The upholding of what is just, especially fair treatment and due reward in accordance with honor, standards, or law.
4. Conformity to truth, fact, or sound reason.

What is injustice? What is an example of something that was once perfectly legal and is now considered "manifestly" unjust? One of several prominent examples will come to mind: a) slavery; b) the Holocaust; c) the denial of rights to women; or d) the treatment of American Indians. The essential feature which links these past great moral evils and injustices is the treatment of some class of human beings as less than full "persons." The progress of human history of which we can be proudest is the extension of justice and full legal protection to the weakest and most vulnerable members of the human race.

Stare decisis does not prevent a Court from recognizing substantial changes in law and factual circumstances.[153] The policy of *stare decisis* is "at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or overruling all prior decisions."[154] These Women's Affidavits, the largest body of direct sworn legally admissible evidence in the world showing the effect of abortion on women, cry out to you. It is time to end this manifest injustice and restore justice, righteousness, and equity to the United States of America justice system. It is just that the Court's judgment be vacated.

PRAYER

153. *Agostini, supra.*
154. 521 U.S. at 236.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Norma McCorvey respectfully prays for the following relief:

a. the immediate re-convening of a three-judge court pursuant to 28 U.S.C. § 2284;

b. an evidentiary hearing and oral argument before the three judge court;

c. award of attorney's fees and costs as provided under federal law;

d. an order by the three judge court that the declaratory judgment heretofore entered in favor of Plaintiff is vacated in light of changed law and factual conditions because it is no longer just or equitable to give it prospective application; and

e. such other and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted,

THE JUSTICE FOUNDATION
(Formerly Texas Justice Foundation, and still doing business in Texas as Texas Justice Foundation)
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CERTIFICATE OF SERVICE

A true copy of the above and forgoing has been hand-delivered to: the Texas Attorney General, 300 W. 15th Street, Austin, Travis County, and the District Attorney for Dallas County, Frank Crowley Courts Building, 133 N. Industrial Blvd. LB19, Dallas, Dallas County, Texas.

SIGNED this the 17th day of June, 2003.

Allan E. Parker, Jr.

CERTIFICATE OF CONFERENCE

I hereby certify that on June 12 and 13, 2003, I had a telephone conference with Ted Cruz, Solicitor General for the State of Texas regarding this Motion. An agreement could not be reached, and therefore a hearing on this matter will be required.

I hereby certify that I contacted the office of Bill Hill, District Attorney for Dallas County, Texas, on June 13 and June 16, 2003. We were/were not able to reach an agreement regarding this Motion.

SIGNED on this the 17th day of June, 2003.

Allan E. Parker, Jr.